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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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NORMA MURRAY, et al.

v.

DOCKET NO. 39-86-226-2

PRESTON COUNTY BOARD OF EDUCATION

DECISION

Grievants, Norma Murray, Donna Goff, Ruby Sheets and Lisa Shirley are employed by the Preston County Board of Education as teacher aides. The grievants allege they have been transferred in violation of W. Va. Code, 18A-4-8b and request to be placed back in the positions they held during the 1985-1986 school year.

Due to a loss of eligibility, the Chapter One aide positions were eliminated at the Fellowsville, Newburg, Denver and Rowlesburg schools prior to the 1986-1987 school year. The Chapter One aides in those schools were transferred to the grievants' kindergarten and special education positions and the grievants were in turn placed on the transfer list. Ultimately, the grievants were placed in their present positions and the five aides with the least seniority in the county were terminated and placed on the preferred recall list.

The grievants allege they have been illegally bumped from

their positions. The board denies bumping occurred "...because only aides in affected schools were transferred." The board asserts that W. Va. Code, 18A-4-8b requires that all decisions affecting service personnel be based on seniority, qualifications and past evaluations. By placing all aides in the affected schools on transfer and the filling the remaining positions based on qualifications and seniority, the rights of the senior employees were protected.

Testimony presented at the level four hearing indicates that several schools were determined to be ineligible for the federally funded Chapter One program for the 1986-1987 school year. As a result, five aide positions in the county were eliminated through a reduction in force. These facts trigger the application of W. Va. Code, 18A-4-8b, which requires that the employee(s) with the least amount of seniority be released during a reduction of the work force. The employee(s) displaced by the eliminated program may then be transferred and reassigned to a position vacated through the reduction of the work force. A service employee cannot "bump" a less senior service employee from a job in the same school in another area. State Superintendent of Schools Opinion, Re: Aide Seniority, April 24, 1986. See also Op. Atty Gen., December 2, 1982.

In addition to the foregoing it is appropriate to make

the following findings of fact and conclusions of law.

Findings of Fact

1. During the 1985-1986 school year the grievants were assigned as follows: Donna Goff, kindergarten aide at Newburg; Ruby Sheets, kindergarten aide at Denver; Lisa Shirley, kindergarten aide at Rowlesburg and Norma Murray, special education aide at Fellowsville.

2. The Newburg, Denver, Rowlesburg and Fellowsville schools lost their eligibility for the federally funded Chapter One program for the 1986-1987 school term, resulting in the elimination of five aide positions in the county.

3. The Chapter One aides, who were also the most senior aides at the affected schools, were transferred to the positions held by the grievants, who in turn were transferred to positions in other schools.

4. The five aides with the least seniority in the county were released as part of a reduction in work force and placed on the preferred recall list.

Conclusions of Law

1. When a county board of education is required to reduce the number of employees within a particular job classification, the employee with the least seniority shall be released. W. Va. Code, 18A-4-8b (b).

2. When a reduction of work force occurs as a result

of the elimination of a program, the service employee displaced by the defunct program is to be transferred to the position vacated by the least senioered employee. State Superintendent of Schools Opinion, Re: Aide Seniority, April 24, 1986. See also Op. Atty Gen., December 2, 1982.

3. Interpretations of statutes and school laws made by the State Superintendent of Schools are persuasive authority unless clearly erroneous. Smith v. Board of Education of the County of Logan, 342 S.E. 2d 685 (W. Va. 1985).

As the board of education improperly transferred the grievants, who were neither the most or least senioered aides in the county, as a result of a reduction in the county work force, the grievance is hereby GRANTED.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Preston County and such appeal must be filed within thirty (30) days of receipt of this decision. (Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATE

December 29, 1986

Sue Keller

SUE KELLER
Hearing Examiner